

**ENTERED**

November 12, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

CHRISTOPHER DEMPSEY,

Plaintiff,

VS.

GENE MILLER, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:20-CV-72

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION**

Before the Court is Magistrate Judge Julie K. Hampton's Memorandum and Recommendation (M&R), entered on July 14, 2020. (D.E. 16). The M&R recommends that the Court (1) dismiss Defendant Gene Miller from this action; (2) dismiss Plaintiff's claims for money damages against Officer Julio De La Cruz in his official capacity as barred by the Eleventh Amendment; and (3) dismiss with prejudice Plaintiff's claim against Defendant for failure to state a claim and/or as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). (D.E. 16, p. 1). It is further recommended that the dismissal of this case counts as a "strike" for purposes of 28 U.S.C. § 1915(g). *Id.*

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. No objection has been filed. When no timely objection has been filed, the district court need only determine whether the magistrate judge's memorandum and recommendation is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam); *Powell v. Litton Loan Servicing, LP*, No. CIV. A.

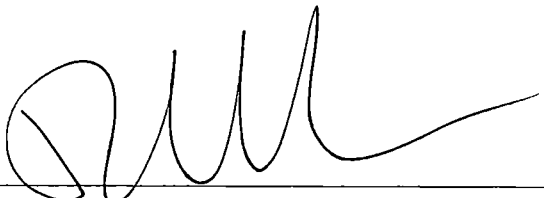
H-14-2700, 2015 WL 3823141, at \*1 (S.D. Tex. June 18, 2015).

Having carefully reviewed the proposed findings and conclusions of the Magistrate Judge, the filings of the parties, the record, and the applicable law, and finding that the M&R is not clearly erroneous or contrary to law, the Court **ADOPTS** the M&R in its entirety. (D.E. 16).

Accordingly, the Court:

- (1) **DISMISSES** Defendant Gene Miller from this action.
- (2) **DISMISSES** Plaintiff's claims for money damages against Officer Julio De La Cruz in his official capacity as barred by the Eleventh Amendment.
- (3) **DISMISSES WITH PREJUDICE** Plaintiff's claim against Defendant for failure to state a claim and/or as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1).
- (4) **ORDERS** that the dismissal of this case be counted as a "strike" for purposes of 28 U.S.C. § 1915(g).

SO ORDERED.

  
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DAVID S. MORALES  
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas  
November 12, 2020